OGC 76-1712
6 April 1976

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MEMORANDUM FOR: [redacted] Office of Legislative Counsel

SUBJECT : Comments Regarding HR 12039

1. The two issues I will address are the lack of clarity regarding the definition of person in the Bill and problems which would be faced with respect to the notification provisions of the Bill.

2. Persons -- It is unclear as to whether the persons referenced in this Bill refers to all persons commonly assumed under that term or only to the class presently covered by the Privacy Act--that is, U.S. citizens and permanent resident aliens. There are two hints in the Bill which would indicate that the former definition is intended by the drafters. The reference to "subject" on page 2, line 25 and the reference to "he, she or it" on page 3, line 19 would tend to indicate that there is an intent to include all persons as accepted under the Freedom of Information Act. If this is the case, the Bill would then purport to require notification to all such persons for the subject of the specific surveillance activities defined in section 2(a) of this Bill. This would, of course, require notification of subjects of necessary foreign intelligence interest who are not U.S. citizens, permanent resident aliens or other persons recognized as United States domestic entities. I believe that it should be pointed out either in testimony or in our statement of views that such a definition would seriously inhibit the purpose of U.S. intelligence gathering activities.

3. Notification -- This Bill requires that all subjects of a file or all subjects named in an index under the so-called CHAOS Program are to be notified of the existence of this information. Much of the information held in the so-called CHAOS Program is not complete enough to sufficiently identify the individual or person concerned. A name alone, even a full name, or a name coupled with a reference to an organization or another person, does not identify the subject with sufficient clarity to assure proper notification. In many cases

names are incomplete or are not coupled even with past addresses. To identify such individuals, much less other subjects with any degree of certainty, would require a further investigation which would, of course, defeat the purpose of this legislation as well as run counter to the recommendations of the President's Commission on Intelligence Activities in the United States and would violate the recently enacted Executive Order 11905. An attempt to notify subjects based on information available in Agency files, would result in a great deal of misdirected mail circulated through the postal system which would in itself contribute to a proper invasion of privacy. In addition, it is likely that in some instances an individual would be wrongly identified and thus be notified of existence of information which was not in fact identical to such person.

4. In the case of mail intercepts, the same problem occurs in that there is a high statistical probability that the subject of the intercept would have changed his, her or its address in the intervening years. It must be remembered that much of this mail was intercepted in the 1950's and early 1960's and in most cases the only address available to this Agency is the address found on the letter.

5. The CIA has stated on several occasions that any individual or organization seeking to determine if the CIA holds information pertaining to them may contact this Agency, and such information as is available pursuant to the Freedom of Information Act or the Privacy Act will be released. Several thousand persons have done so already, and we feel this system has provided an adequate method for interested persons to exercise their rights under the Acts. By responding to requests, we are able to, of course, determine the current address of the individual and in those cases where it was difficult to match existing information with a particular requester, we have been able to request additional identifying information needed only for the purpose of determining if the information we have pertains to such individual. We should also note that pursuant to CIA Regulations 32 Code of Federal Regulations, section 1901 no fee is charged for provision of information on an individual on himself or herself.

6. HR 12039 further provides that such persons will have the option of requiring the Agency "to destroy each copy of such file or index in its possession." The CIA plans to carry out such destruction when the present moratorium is lifted. We feel that total destruction of the CHAOS Program files and all attendant indices for the purpose sought by this provision in HR 12039.

7. This Office received today a copy of the 2 April 1976 letter to the DCI requesting his testimony on this legislation. Among other things, this letter requests testimony on whether or not CIA contemplates a notification provision similar to that of the Department of Justice. I have been in contact with Justice, but they have not yet developed their final notification plan. It is expected, however, that such notification will be limited to those persons which are the subject of positive harassment under COINTELPRO. Such positive harassment would include actions to interfere with marital relations, employment or organizational membership. It is expected that such notification will be limited to slightly under 100 persons. In view of the fact that CHAOS did not entail such activity, I believe CIA testimony should so indicate and point out that the basis of Justice Department notification would not apply to any CIA files. The final paragraph of the 2 April 1976 letter requests views on the applicability of sections (e)(1), (5), and (7) of the Privacy Act to the CHAOS files. In brief, I believe we can state that those provisions do apply to the CHAOS files and for that reason, among others, we intend to destroy the CHAOS files as contemplated by the Privacy Act. I will give you a more detailed statement on these sections, if you wish.

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